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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil from 3 to 14 August 2015.

The Special Rapporteur expresses his appreciation to the Government for the invitation, and for granting him unfettered access to all places of detention and to confidential interviews with inmates of his choosing.

With regard to legislation, safeguards and prevention, and institutional reform, Brazil has made significant progress on paper; however, implementation is lagging far behind.

Torture and ill-treatment, sometimes killings, by police and prison staff continue to be a frighteningly regular occurrences, most notably affecting persons belonging to racial, sexual, gender and other minority groups.

Conditions of detention amount to cruel, inhuman or degrading treatment. Severe overcrowding leads to chaotic conditions inside the facilities, and greatly impacts the living conditions of inmates and their access to food, water, legal defence, health care, psychosocial support, and work and educational opportunities, as well as sun, fresh air and recreation.

Impunity remains the rule rather than the exception, partly owing to highly deficient procedures and practices with regard to monitoring and documentation.

* The present report was submitted late in order to reflect recent developments.

Please recycle

The Special Rapporteur requests the international community to support the efforts of Brazil to implement the above-mentioned recommendations, and to close the gap between the country's ambitious laws and policies and the everyday situation of people deprived of their liberty, in particular by ensuring comprehensive and effective enforcement of new and existing laws and policies.

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** Circulated in the language of submission only.

I. Introduction

1. The present report is submitted by Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, who conducted a visit to Brazil from 3 to 14 August 2015, at the invitation of the Government. The purpose of his visit was to assist the Government in its efforts to eradicate torture and improve conditions for persons deprived of their liberty, by assessing the legal and factual situation of torture and ill-treatment in the country, and identifying needs for reform to prevent torture and ill-treatment in the future.

II. Activities of the Special Rapporteur

2. In the capital, Brasilia, and the Federal District, the Special Rapporteur met with senior officials of the ministries of external relations, justice and health; the secretariats on policies for women, human rights and youth; the Superior Court of Justice and the Supreme Federal Court; the Offices of the Federal General Public Defender, and the Prosecutor General of the Republic; the national councils on justice, on the public ministry, criminal and prison policy, and the rights of children and adolescents; the National Human Rights Council; the National Committee to Prevent and Combat Torture; the Commission of Human Rights and Participatory Legislation of the Senate; the Commission on Human Rights and Minorities of the Chamber of Deputies; and the national mechanism to prevent and combat torture.

3. In the states visited by the Special Rapporteur — Sao Paulo, Sergipe, Alagoas and Maranhao – he met with representatives of the respective courts of justice; offices of the general prosecutor; secretariats of public security, justice and penitentiary administration; unions of prison guards; secretariats of human rights, popular participation and youth; offices of the public defender; civil society organizations; victims and their family members; and international organizations.

4. The Special Rapporteur visited a representative sample of places where people are deprived of their liberty, including psychiatric institutions, police stations, socioeducational centres for children, pretrial facilities and penitentiaries.

5. He expresses his appreciation to the Government for the cooperation extended to him during his visit, in particular with regard to unfettered access to all places where people are deprived of their liberty, in keeping with the terms of reference for fact-finding missions by special rapporteurs,[1] and to interviewing detainees in private.

6. The Special Rapporteur expresses his gratitude to the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme staff presence in Brasilia, and others involved in the visit, for their excellent assistance throughout the mission. He thanks Brazilian civil society and the international community based in Brazil for their availability and invaluable insights. He is grateful to all his interlocutors, including senior State officials, representatives of civil society, lawyers and detainees, including victims of torture and ill-treatment, with whom he met. The Special Rapporteur expresses solidarity with the victims and survivors of torture, their relatives and Brazilian human rights defenders, as well as his support for their important efforts.

[1] See E/CN.4/1998/45, appendix V.

III. Legal framework

A. International level

7. Brazil is a party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights and the two Optional Protocols thereto; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto; the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Rights of the Child; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention relating to the Status of Refugees; and the Convention relating to the Status of Stateless Persons. Brazil is also a signatory to the Rome Statute of the International Criminal Court.

B. Regional level

8. At the regional level, Brazil is a party to the principal human rights treaties of the Organization of American States, including the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; and the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance. The State also recognizes the jurisdiction of the Inter-American Court of Human Rights.

C. National level

1. Constitution

9. The federal Constitution is the main political and legal instrument of Brazil. Each of the 26 states also has its own constitution, established by article 25 of the federal Constitution, and the federal district has its own Organic Law, as per article 32 of the Constitution.

10. Civil, penal and procedure codes are federal, and states are subject thereto, with no authority to create their own. However, states have their own security systems, courts and prosecution authorities.

11. Article 5 of the Constitution provides that no one shall be subjected to torture or inhuman or degrading treatment (para. III); acts of torture are not subject to bail, grace or amnesty (para. XLIII); cruel punishment is prohibited (para. XLVII); and prisoners have the right to physical and moral integrity (para. XLIX). Rights and guarantees articulated in the Constitution are not exclusive (para. II). International human rights treaties have special constitutional status: once ratified by the federal Congress, they are immediately applicable.

2. Legislation

12. Article 1 of Law No. 9.455 of 1997 (Law on Torture) defines the crime of torture as the act of constraining someone with the employment of violence or serious threat thereof, causing them physical or mental suffering (a) with the intent of obtaining information, or a

declaration or confession from the victim or a third party; (b) to provoke an action or omission of a criminal nature; and (c) as a result of racial or religious discrimination. Moreover, it is considered a crime of torture to submit someone under one's custody, power or authority to the use of violence or serious threat of intense mental or physical suffering as a means of applying personal punishment or as a preventive measure.

13. The penalty for such a crime varies from two to eight years in prison. Those who absent themselves before torture occurs, when they were able to prevent it or ascertain that it would occur, are subjected to imprisonment for one to four years. However, if serious bodily harm results from the crime of torture, the penalty is 4 to 10 years, and if the result is the death of the victim, the prison sentence may be increased to 16 years. Punishment may be increased by one sixth to one third of the sentence if the crime is perpetrated (a) by a public agent; (b) against children, pregnant women, the impaired or adolescents; or (c) in conjunction with kidnapping. Paragraph 6 of article 1 of the Law on Torture determines that crimes of torture are not subject to bail, grace or amnesty.

14. The Law on Torture is applicable to the whole territory of Brazil; however, the crime of torture is not a federal crime and, accordingly, each State is responsible for applying the law and enforcing judicial sentences.

15. This lack of federal power of enforcement with regard to the punishment and prevention of torture at the state level results, in practice, in a lack of effective implementation of the Law on Torture, due, inter alia, to resource constraints, political priorities or complicit officials.

IV. Assessment of the situation

A. General

Overcrowding

16. According to the Ministry of Justice, Brazil's prison population is 711,463 prisoners (including house arrests), making it the fourth largest prison population in the world per capita, at 193 persons per 100,000. Thirty years ago, the prison population was about 60,000. Recent figures show that it increased by 74 per cent during the period 2005-2012. In 2012, 60.8 per cent of all inmates were of African descent and 54.8 per cent were under the age of 29.

17. Despite an investment of 1.2 billion Brazilian reales by the federal Government to create additional prison capacity, the continual increase in the prison population, combined with an official penitentiary capacity of merely 376,669 prisoners, has created a penitentiary system marked by endemic overcrowding – in one State at 265 per cent beyond capacity.

18. The Special Rapporteur strongly encourages the Government to focus on decreasing the prison population, rather than on increasing prison facilities. He strongly supports alternative measures to incarceration; however, he expresses concern at the position aired by some authorities that such measures ought to apply to domestic violence and that the Maria da Penha law (which raised the penalties for domestic violence) is an obstacle to the use of alternative measures. The Special Rapporteur strongly disagrees, stressing that domestic violence is a very serious crime. Any attempt to address the issue of overcrowding by returning to impunity for violence, including against women and children, would be a mistake.

19. The Special Rapporteur is concerned at the high number of pretrial detainees (40 per cent) and the amount of time spent in pretrial detention (five months on average),[2] factors which contribute to severe overcrowding.

20. Generally, the Special Rapporteur notes a national reoffending rate of between 25 and almost 50 per cent, according to various but incomplete studies,[3] and a concerning lack of effective social reinsertion programmes.

21. He notes that on 4 March 2015 the Chamber of Deputies of the Congress of Brazil created a commission to investigate the penitentiary system in Brazil. He hopes that the commission will be able to provide solutions to this pervasive challenge.

Criminal law and procedure: drugs

22. Figures from the periodic bulletin called Infopen[4] show that in 2014 no less than 27 per cent of all detainees faced drug-related charges. Among women and adolescents, the figures were 63 per cent and 24.8 per cent, respectively. Twenty-one per cent of detainees faced larceny or theft charges, a number which may be related to the first category. Many, if not most, of these cases could be dealt with by non-custodial measures, thereby reducing overcrowding.

23. The Special Rapporteur is aware of Law No. 11.343, which is aimed at directing drug users towards medical attention and treatment; however, he is concerned at reports from legal experts that law enforcement in practice leads to the incarceration of small-time dealers, drug addicts who trade only to support their vice, and drug users wrongly accused of dealing. This group saw a 320 per cent increase in the rate of detention from 2005 to 2012. These reports support testimony that the Special Rapporteur received from young men and children, who claimed they had been caught with de minimis amounts for personal use. The fact that the female prison population increased by 246 per cent between 2000 and 2012, compared with an increase of 130 per cent for the male prison population during the same period, also suggests an inadequacy in certain laws and an unevenness their application.

24. Brazil has decriminalized possession of drugs for personal consumption but, to determine the purpose of possession, courts do not apply a standard based on fixed quantities, but rather a presumption of intent to trade based on the police report of apprehension.

25. As almost all arrests are reported as "in flagrante delicto", the police officer's testimony is often decisive in determining the amount of time a suspect spends in detention until trial. The Special Rapporteur notes that a judicial practice more oriented to the objective of decriminalizing possession for private use would be likely to result in a significant reduction in overcrowding.

Children and adolescents

26. By law, detention of children and adolescents is subject to principles of brevity, exceptionality and respect for the particular condition of children and adolescents in a given developmental phase. In practice, however, detention is not always used as a measure of

[2] Data collected by the National Prison Department (not all states provide data) show that 60 per cent of detainees spend more than 90 days in pretrial detention.

[3] Instituto de Pesquisa Econômica Aplicada, Reincidência Criminal no Brasil: Relatório de Pesquisa (Rio de Janeiro, Brazil, 2015), p. 111.

[4] Available from www.infopen.gov.br.

last resort, and detention conditions often do not correspond to the specific needs of this group, as described below. Currently, more than 20,000 children are serving sentences.

Afro-Brazilian community

27. Numbering 50.7 per cent of the total population, Afro-Brazilians account for merely 20 per cent of gross domestic product; 78 per cent live below the poverty line, while 40 per cent have completed less than seven years of schooling, and are affected significantly more than the overall population by nearly every possible negative indicator.

28. According to Infopen, in 2014 about 67 per cent of Brazil's total prison population was classified as "black" or "mulatto".

29. Afro-Brazilians are at a significantly higher risk of mass incarceration, police abuse, torture and ill-treatment, medical neglect, being killed by the police, receiving higher sentences than their white counterparts for the same crime and suffering discrimination in prison — suggesting a high degree of institutional racism.

30. In addition, Afro-Brazilians are gravely impacted by serious crime: death by homicide is 87 per cent higher among Afro-descendants than in the population as a whole; in some regions, the number of homicides among Afro-Brazilians is more than 400 per cent higher than among other groups. The Special Rapporteur heard worrying reports of police involvement with death squads that are terrorizing black communities.

31. He notes that on 4 March 2015 the Chamber of Deputies of the federal Congress created a commission for investigating the violence perpetrated against Afro-Brazilian youth.

Lesbian, gay, bisexual, transgender and intersex persons

32. The Special Rapporteur notes with concern that little data exist on lesbian, bisexual, transgender and intersex people in conflict with the law in Brazil. Few people declare themselves as such in prison, the great majority of incidents are not reported due to fear of retaliation from the perpetrator(s), and there is little interest in mapping such incidents.

33. From the information available, the Special Rapporteur understands that they are the target of systematic threats and serious harm to their physical and psychological integrity, including sexual violence and killings during arrests and detention, by police and penitentiary agents, as well as by fellow inmates.

34. Joint resolution 1/2014 of the National Council on Criminal and Penitentiary Policies and the National Lesbian, Gay, Bisexual and Transgender Council provides that lesbian, bisexual, transgender and intersex persons are entitled to specific wings and cells. Compulsory transfers are, in principle, considered a violation, but the resolution foresees no sanctions in the event of breaches. In terms of access, according to Infopen, in 2014 only about 5 per cent of establishments had special cells for this group. The resolution is unclear about how and by whom searches of lesbian, bisexual, transgender and intersex people must be conducted. Implementation is left up to each institution, and there are no sanctions for non-compliance.

35. The joint resolution is undoubtedly a positive step; however, the Special Rapporteur is concerned that it could contribute to the further exclusion and isolation of such persons, depending on how it is implemented.

36. In terms of access to health services, lesbian, bisexual, transgender and intersex persons are, relative to the rest of the prison population, likely to be additionally affected by inadequacies stemming from overcrowding. In that regard, the joint resolution establishes

that the national health policies relating to lesbian, bisexual, transgender and intersex persons, including access to hormone treatment, also apply in prisons.

Partners and family members of inmates

37. The Special Rapporteur notes with great concern that partners and family members, including children, adolescents, women and the elderly, in order to gain access to penitentiaries, prisons and socioeducational centres to visit inmates, are often subjected to violent, humiliating and oppressive body searches and other forms of sexual violence. This entails stripping women and forcing them to squat over a mirror, contract their muscles and open their anus and vagina with the fingers to allow prison personnel to inspect them. This treatment mostly affects the female relatives (including infants) of inmates, but is also applied to male visitors and inmates, including adolescents in socioeducational centres.

38. Invasive body searches can never be justified on the grounds of aiming to prevent the smuggling of illegal objects, a purpose for which there are less intrusive alternatives. Several international and regional bodies have emphatically rejected their use.

39. The federal Senate and the Commission on Human Rights and Minorities of the Chamber of Deputies unanimously approved a bill (7764/14) to ban the practice at the federal level. It is currently pending approval by the Security Commission and the Constitution and Justice Commission of the Chamber of Deputies. Bill 404/2015, banning the practice in establishments for young offenders, is pending in the Chamber of Deputies.

40. The Special Rapporteur stresses the responsibility of the State to protect the physical and psychological integrity of inmates and relatives, and strongly urges the immediate abolition of these methods.

41. The Special Rapporteur has received consistent reports of threats against female partners and family members of inmates by organized criminal groups, who force them, for example, to participate in trafficking. These cases often include rape, forced prostitution and smuggling of drugs at visits. He is alarmed by reports suggesting that such acts are sometimes the result of cooperation between prison staff and drug bosses.

Police and prison personnel

42. Furthermore, police and prison personnel suffer as a result of extensive mass incarceration and severely overcrowded facilities. They lack physical space and are affected by poor health and sanitary conditions, as well as by the environment of violence, in which many fear for their life and physical integrity. The guard-to-inmate ratio ought to be 1:5, however, the Special Rapporteur learned of states where prisons were short of 1,000 staff, and of at least one prison where the guard-to-inmate ratio was 2:490.

43. Staff members often have very poor training, generally marked by a militarized approach that ill equips them to deal appropriately with the complexity and tension that constitutes their day-to-day work. Moreover, the combination of lack of training and highly inadequate working conditions only exacerbates the pattern of violence and has a direct and measurable effect, including in terms of military police homicides.

44. Adding to this vicious circle, the Special Rapporteur received reports of cases in which prison guards had been fired for reporting incidents and replaced by security officers with two weeks of training.

Case of Pedrinhas

45. The Special Rapporteur visited the Pedrinhas complex in Sao Luis, Maranhao. In 2013, he communicated with the Government as a result of a deadly riot in Pedrinhas. At the time of the visit, the authorities had succeeded in pacifying the prison by separating the

rival criminal factions that had often attacked each other in recent times. Nevertheless, conditions in Pedrinhas remain explosive. The units are very overcrowded,[5] and security is barely enforced by keeping inmates in their collective cells for 22 or 23 hours per day. Family visits take place under conditions of humiliating searches. Food and medical services are sorely inadequate. Members of the security staff are heavily armed inside the prison, which can lead to a new round of deadly riots that affect inmates, relatives and prison personnel alike.

Privatized facilities

46. The Special Rapporteur visited a number of facilities that outsource certain services, such as food distribution, to private contractors, as well as one that is wholly managed by a private company under contract with the state. This private company is responsible for all services provided to the inmates and for internal discipline, except for perimeter security, which is the responsibility of the heavily armed police.

47. In sharp contrast to other facilities visited, this facility was not overcrowded, conditions overall were decent, and both doctors and nurses were available round-the-clock.

48. The contract between states and these private companies stipulates that the prison cannot be forced to receive inmates beyond its capacity plus 10 per cent. Under such terms, privately run facilities will never be severely overcrowded; yet, it stands to reason that such an arrangement will be an additional factor in aggravating overpopulation in publicly run prisons in the same state.

49. The Special Rapporteur is sceptical in general about privately run jails. He notes that similar arrangements in other countries have resulted in serious violations of the rights of persons deprived of freedom. He expresses concern that the lines of accountability for misconduct by non-state agents may be blurred, and that essential services to inmates may suffer under the pressure to maximize corporate profits. Under international law, the Government remains responsible for the well-being and security of all persons subject to its jurisdiction.

B. Torture and ill-treatment

Acts of torture and ill-treatment

50. Numerous credible testimonies from inmates — women, men, girls and boys — chosen at random, in various detention facilities, pointed to the frequent use of torture and ill-treatment, varying in methods and the severity of the pain and suffering inflicted. This occurs in the context of arrest and interrogation by police and treatment by prison personnel.

51. Severe kicking, beating (sometimes with sticks and truncheons), suffocation, the administration of electrical shocks with taser guns, the use of pepper spray, tear gas, noise bombs and rubber bullets, and profuse amounts verbal abuse and threats are reported as the most frequent methods used by police and prison personnel, not as a means of legitimate crowd control or of breaking up disturbances that merit some use of force, but rather in the context of excessive use of force and/or punishment.

[5] Official overpopulation in Maranhao prisons is 111 per cent (Infopen, 2014). However, the figure is misleading because capacity is estimated at levels that are already overcrowded. Conditions observed in all cells visited confirmed that assessment.

52. Inside penitentiaries, prison personnel are often heavily armed, including with assault rifles, shotguns and hand guns – in one instance, the delegation even saw a tear-gas and flash-bang grenade launcher – which testifies to an extraordinarily high level of tension. The Special Rapporteur notes with concern the risk of such armament feeding into a vicious circle of distrust and tension between personnel and inmates.

53. Law No. 13.060, adopted on 22 December 2014, provides that priority has to be given to the use of non-lethal weapons by security forces, following the principles of legality, necessity and proportionality; however, the Special Rapporteur notes that said law applies only to security forces (not to prison officers) and does not mention which weapons are and are not included, and that further regulation is needed.

54. Adolescents subjected to socioeducational measures reported a high frequency of ill-treatment by police upon arrest and by personnel in socioeducational centres. Beatings, sometimes with sticks and truncheons, appeared to be a matter of course, as did profuse verbal abuse and threats.

55. The Special Rapporteur learned that adolescents who complain about such treatment are often punished by beatings or by loss of benefits, including extended periods of time in isolation cells.

56. Moreover, he heard reports of violent routine searches of cells, often after weekly visits, during which personnel, under the pretext of searching for drugs and/or weapons, would destroy everything and torture the inmates, including by use of dogs.

57. The Special Rapporteur also heard about cases of prisoner-on-prisoner violence, to which prison personnel turn a blind eye or which they even encouraged. This type of abuse is hard to document, as visits are simply denied immediately after such incidents.

58. Cases of torture and other ill-treatment are substantially underreported. The majority of the persons interviewed — adults and adolescents — told the Special Rapporteur they had refrained from filing complaints about ill-treatment out of fear of making matters worse, or because they expected it would be useless. This pattern is backed by various civil society monitors with whom the Special Rapporteur met; inmates report having been tortured but cannot be persuaded to bring formal charges.

59. Torture and ill-treatment of this nature constitutes an entrenched and pervasive practice that has been "naturalized" to such an extent that inmates do not mention it unless asked. The Special Rapporteur acknowledges the National Committee for the Prevention and Fight against Torture and the national mechanism to prevent and combat torture as steps in the right direction to deal with occurrences of torture, and expresses the hope that these result in a robust policy to ensure accountability and break the cycle of impunity.

Excessive use of force: killings and "accidental deaths" during arrests and in custody

60. Despite noting that the number of killings by police has dropped in places where "police pacification units" have been established, the Special Rapporteur is concerned that, according to the Brazilian Forum on Public Security, more than 2,200 people died during police operations throughout Brazil in 2013, an average of six people a day. In Sao Paulo state, according to a recent study by the Instituto Sou da Paz, killings with the participation of police have increased 2 per cent in recent months, while the overall homicide rate declined during the same period. Reportedly, more than 75 per cent of victims from 2010 to 2013 were poor Afro-Brazilian men aged between 15 and 29.

61. While some police killings result from legitimate use of force, many do not. In the vast majority of cases of excessive use of force, the police routinely file reports indicating "resistance to arrest followed by death", thereby avoiding the duty to bring the perpetrators before a court. Numbers from Amnesty International show that, out of 220 investigations,

only one led to a conviction. He strongly encourages Congress to approve bill No. 4,471 of 2012, which abolishes "resistance to arrest followed by death" (*auto de resistência*) and similar mechanisms.

62. In penitentiary facilities, the death rate (homicides, and accidental and natural deaths) is very high. According to Infopen, in the first half of 2014, 565 deaths were registered, of which about half were intentional deaths, equivalent to 167.5 per 100,000 per year; in one State, the rate was as high as 1,502 per 100,000 per year. Reportedly, such deaths occur primarily in the context of prison riots, some of which are reportedly staged by agents, and gang-related inmate violence, during which the perpetrators may be inmates, prison guards or police members sent in to control the insurgence.

63. In 2014, the trial for the 1992 riot in the Carandiru Penitentiary, in which 111 prisoners were killed following a violent intervention by military police, was concluded. Eighty-four police officers were convicted. Carandiru was demolished in 2002. Following the initiation of the trial in 2013, the number of deaths in prisons caused by violence by State agents is said to have dropped.

64. The Ministry of Justice has issued protocols for investigations of homicides in general, a welcome step in breaking the cycle of impunity. There are no specific protocols in place, however, for investigating homicides that are prima facie attributable to law enforcement or corrections agents. By contrast, in such cases significant efforts are undertaken to "make them invisible".

Impunity for acts of torture and ill-treatment and deaths in custody

65. The Special Rapporteur notes that Brazil has made recent strides in the struggle to overcome the all-pervasive impunity for the serious crimes committed by State agents during the military dictatorship (1964-1984), including the valuable work of the Commission of Amnesty within the federal Ministry of Justice and the strongly worded report of the national truth commission released in 2014.

66. Law No. 9.455 of 1997 defines the crime of torture and establishes corresponding sanctions. The Special Rapporteur notes, however, that there is a long way to go in the fight against impunity. Currently, cases of law enforcement agents who commit abuses against detainees and inmates are not investigated in any meaningful way and such perpetrators are rarely brought to justice. No independent investigation mechanism is in place to prevent cases from simply being filed away.

67. He learned of cases of administrative disciplinary measures, and of initiation of prosecutions. For the most part, however, agents accused of serious crimes, including torture, had not been arrested, or, if arrested, had soon been released.

68. Moreover, the Special Rapporteur notes with concern that cases involving violations committed by military agents against civilians are tried in military courts (although the latter include some civilian magistrates). When the suspect is a member of the civil police, jurisdiction lies with ordinary criminal courts.

69. Obstacles remain to implementing the 2010 decision of the Inter-American Court of Human Rights in the case of *Gomes Lund v. Brazil*, which declared the incompatibility of how the amnesty law is applied with the obligations of Brazil under the American Convention on Human Rights.

70. The Special Rapporteur notes that impunity for torture, in addition to its other negative impacts, contributes to an increase in violent crime, as offenders resist arrest rather than surrendering to face torture, or seek revenge for the torture suffered. Impunity thereby creates risks to the life and personal integrity of law enforcement agents. The spiral of criminal violence that affects Brazil is only exacerbated by the prevailing impunity.

71. He takes note of bill No. 4.471 of 2012, which is pending congressional approval, requiring due investigation of deaths and injuries resulting from the actions of state agents. Despite noting that no reference is made to "state agents' omission", he is encouraged at the prospect that this legislation will prevent violence, determine responsibilities and ultimately overcome impunity. He notes that measures similar to those in that bill are already being applied to some extent in some states, and that other states might benefit from their lessons learned.

72. The Special Rapporteur welcomes an envisaged "report on organized crime and its control over the prison system", which he understands is aimed at addressing the problem of cooperation between officials and organized criminal groups.

Documentation of torture and the role of the Medical-Legal Institute

73. Documentation of torture, ill-treatment and death in custody (including natural and violent deaths) is an important component in the fight against impunity. The Special Rapporteur therefore expresses concern at the above-mentioned underreporting and lack of appropriate documentation.

74. Investigations of allegations of torture, ill-treatment and death in custody are not always, or even regularly, complemented with scientific examination of the victims conducted by specialists trained in legal medicine, which leads to a disturbing lack of documentation of torture and ill-treatment and, in turn, contributes to impunity.

75. Detainees, authorities and non-governmental organizations (NGOs) unanimously report that examination and questioning about injuries are very rare, that medical examinations are conducted very sporadically in both detention centres and prisons, and that those cursory medical examinations which do take place are deficient in quality, and often carried out in the presence of the officers who are presumptively responsible for the torture and ill-treatment.

76. The Special Rapporteur expresses concern that forensic services in Brazil, including the Medical-Legal Institute, are marked by a profound lack of training on international forensic medical standards, such as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol).

77. The Medical-Legal Institute forms part of the Civil Police and reports to the public security department of the respective state. The Special Rapporteur stresses the lack of independence and the risk of undermining the impartiality of forensic examiners. If impartiality is compromised, it renders forensic examinations and reports unreliable sources of scientific evidence.

78. In 2014, the National Council of Justice issued its recommendation 49, which provides guidelines for judges on investigations of complaints of torture in the adult prison and youth reform systems. Such guidelines are non-binding, however, which makes it difficult to affirm the extent to which judges comply with them.

79. There is a critical absence of an integrated system to monitor and map relevant data related to violence and deaths caused by police and prison personnel. Starting in 2012, the federal Government began investing in a national system to collect and disseminate information on the matter, a very worthy endeavour that results in the periodic bulletin called Infopen, cited often in the present report. Infopen, however, currently relies on receiving information from the states, which receive information from the respective prison units — a chain of information that is frequently interrupted or broken. With regard to police stations, no systematic information-gathering exists.

80. It is of crucial importance to strengthen the country's capacity to produce and publicize clear and relevant data, including the incidence of torture, ill-treatment and death in custody among various vulnerable groups, including racial, sexual, gender and other minority groups.

C. Safeguards and prevention

81. Under constitutional, substantive and procedural law, Brazilian legislation, on paper, offers adequate safeguards against the ill-treatment of its citizens. The Special Rapporteur welcomes the policies and measures adopted, or envisioned, at various levels of government to fight torture and ill-treatment.

82. Yet, he observed during his visit how the sudden increase in arrests and incarceration had contributed to straining physical infrastructure and human resources, at the expense of the observance of these safeguards.

83. He learned that the national Human Rights Ombudsman's Office has a hotline service that receives complaints of torture and ill-treatment. Between January 2012 and June 2014, it received 5,431 such complaints (about 181 per month), of which 84 per cent referred to incidents at police stations and detention facilities. However, as suggested above, the vast majority of acts of torture, ill-treatment and killings were never reported.

84. Law No. 12.847 of 2 August 2013 establishes a national system for preventing and combating torture, which includes a national committee for preventing and combating torture and a national mechanism to prevent and combat torture, as required by the Optional Protocol to the Convention Against Torture, which has appointed all its members and has recently begun monitoring and policy formulation activities.

85. Currently, only six states have laws establishing a torture prevention mechanism, and only two of these have effectively implemented a statewide preventive mechanism, modelled after requirements of the Optional Protocol to the Convention against Torture. The Special Rapporteur expresses his concern at the reported lack of funding for those mechanisms.

86. The national mechanism to prevent and combat torture is physically placed at, and financially dependent on, the Human Rights Secretariat, with its resources deriving from the general budget of the latter.

87. The Special Rapporteur strongly encourages the Government to ensure that key information is made available and easily accessible to the public. Fair representation of NGOs in various councils is contemplated in Law No. 12.847/2013. It would be important to make public the criteria applied in appointing the 12 NGO members of the national mechanism to prevent and combat torture.

88. The national mechanism undertook its first visits in June 2015 and has published its first report, highlighting a lack of compliance with international standards and offering recommendations to various Government institutions. The Special Rapporteur encourages the Government to ensure that these recommendations receive the appropriate follow-up.

89. Parallel to the monitoring activities of the national mechanism, as well as statewide preventive mechanisms, prisons in Brazil are regularly visited by monitoring institutions, such as public defender's offices, prosecutors and a number of civil society organizations. With some exceptions, all are granted access to detention centres.

90. In addition, the Special Rapporteur received concerning reports of a recent incident, on 17 August 2015, when a team from the statewide preventive mechanism of Pernambuco, during a detention visit, was subjected to racist and transphobic insults and death threats by

one guard, who reportedly also drew his gun. Such acts are utterly detrimental to any monitoring and documentation efforts and must immediately be prevented, investigated and punished.

91. Federal and state governments cooperate with each other and with independent organizations of civil society in various national councils that have been established for specific purposes, such as the National Commission to Prevent and Combat Torture. The Special Rapporteur stresses the urgent need for genuine efforts to ensure nationwide implementation of the safeguards offered by these institutions and procedures.

92. He is concerned about the use of in flagrante delicto arrests. Judicial arrest warrants appear to be the exception when they should be the rule, and the police use an elastic definition of *flagrancia* that bears little resemblance to the circumstance in which an agent actually witnesses the commission of a crime. The notion of *flagrancia* is often a disguised illegal search and seizure, or the result of illegal investigative measures. He notes that a more rigorous approach to legitimizing arrests could reduce the prison population and facilitate an improvement in the relationship between police and the community.

93. The Special Rapporteur learned that access to a lawyer from the moment of arrest is generally not available, and that the relative number of defenders is extremely low (in one state, the defender-to-inmate ratio was 11:3,000), preventing them from keeping up with their other crucial functions, including representing at trial those who cannot afford a private lawyer (which in Brazil is well above 90 per cent of all criminal defendants) or filing court actions related to torture or mistreatment. Most prisons offer legal aid services for inmates at trial or during appeals, rather than from the moment of arrest. Many inmates told the delegation that the service was not effective.

94. In most of the country, arrested persons come before a judge, on average, five months after arrest. This violates a clear international human rights obligation and deprives such persons of an essential guarantee not only against torture, but also against arbitrary arrest.

95. A similar, unsustainable, delay applies to access to public prosecutors, whose role in defending legality could otherwise protect detainees from abuse. Remedies such as habeas corpus, because of inordinate delays, are de facto of little use as immediate protection. He expresses concern at the current lack of external oversight of the Public Prosecutor's Office. A judge who obtains evidence of torture cannot, under Brazilian law, initiate prosecution but can only report the matter to a prosecutor. A crucial role in protecting against ill-treatment is thus of limited value.

96. In this regard, the Special Rapporteur learned during his visit of a creative initiative by some prosecutors, public defenders, public interest lawyers and NGOs, namely that of filing civil actions on behalf of classes of victims. The effectiveness of such an action is called into question, however, by the fact that many courts are reluctant to grant relief and, when they do and State agencies appeal, the appellate process suspends any injunction or order that may have been issued, adding therefore the many layers of appeal of such orders available in Brazilian law. Part of this problem results from the fact that the remedies granted have tended to be orders to build new prisons or repair existing ones, or the closure of some facilities. Given budgetary constraints, States have unsurprisingly tended to block such actions by appealing to higher courts.

Custody hearings

97. One of the most important public policy initiatives to tackle problems of arbitrary arrest and torture is a promising pilot project, launched in February 2015, to hold custody hearings in five states, including two visited during the mission. Following the launch of the pilot project, all states have now signed an agreement with the National Council of

Justice regarding custody hearings. The purpose of the project is to tackle problems with legal safeguards discussed above by fulfilling the internationally mandated duty of the State to bring every detained person promptly before a judge, who (a) rules on the legality of the arrest; (b) determines the necessity of pretrial detention, orders release on bail or the detainee's own recognizance pending trial, or imposes measures on the detainee, short of detention, to ensure appearance in court; and (c) detects torture and ill-treatment.

98. Custody hearings have the benefit of reducing the disproportionately high number of pretrial inmates (40 per cent on average and, in one State, 78 per cent), and serve the important purpose of discouraging the use of torture. The Special Rapporteur understands that, in the pilot project, provisions are made for bringing the defendant to the courthouse within 24 hours of the arrest for a hearing in the presence of a defence lawyer, a prosecutor, a judge and, if there are signs of mistreatment, a doctor to perform an immediate forensic medical examination.

99. Statistics show that custody hearings, where applied, have resulted in the release after 24 to 48 hours of 43 per cent of detainees (in one state, 52 per cent), as opposed to 10 per cent previously.

100. The Special Rapporteur notes that the Federal Supreme Court actively champions these processes and that the Government is pursuing nationwide legislation to that end. He welcomes the expansion of alternative measures to pretrial detention, such as house arrest, electronic monitoring devices, restrictions on travel, retention of passports and the obligation to report periodically to the court. He notes that funds have been spent on more advanced measures, like electronic surveillance with ankle bracelets, which are expected to be put into effect soon.

101. Notwithstanding, he identifies a number of challenges: (a) the process does not currently apply to persons accused of murder, attempted murder or similarly grave crimes; (b) the rate at which defendants complain of mistreatment is not significantly higher than before, which suggests an underreporting of allegations, and the rate of actual proof of torture remains negligible; (c) with the current design, the detainee risks waiting a long time in the presence of the police officers who arrested him or her instead of in an appropriate facility; and (d) the geographic coverage within each state is not complete, leading to disparities of treatment among detainees in similarly located facilities. Even though all states have signed the agreement, it applies only to state capitals and larger cities.

102. One purpose of the hearing is to determine whether the defendant experienced torture or ill-treatment upon arrest, or in the first hours of detention in the *delegacia* (police station). The Minister of Security for Sao Paulo state told the delegation that, six months into the programme and with 4,198 persons having been brought before a judge, there had been no credible evidence of police abuse. Given the number of credible reports of ill-treatment during interrogation received during his visit, the Special Rapporteur notes that the absence of complaints likely does not reflect reality: the now-prompt hearings cannot have had such an immediate success in curbing torture in interrogation. Indeed, legal experts told the Special Rapporteur that detainees had reported torture during informal interviews, for example in the course of inspections, but had refused to formalize complaints out of fear of reprisal and due to a perception that nothing would be gained by denouncing torture formally — both arguments that he also heard from inmates.

103. According to the Sao Paulo state tribunal, between 24 February and 31 August 2015, judges from the Fifth Department (DIPO 5) investigated 466 complaints of torture and/or ill-treatment that had been brought during custody hearings. In 277 of those cases, the Tribunal found corroborating evidence (*indícios de tortura*) and sent them to the military and civil police internal affairs units for further investigation. As of the drafting of the

present report, no investigations had been concluded and no one had been criminally charged.

104. In order to allow for an examination of all defendants immediately after contact with the judge, public defender and prosecutor, forensic examinations take place in specific forensic centres established at the courthouse where custody hearings are held. The Special Rapporteur expresses concern, however, at the fact that these examinations often are not attended by the public defender or the judge but, paradoxically enough, often are attended by the investigating officers.

105. He wishes to reiterate the importance of addressing the challenges related to lack of training and knowledge of international forensic standards among medico-legal staff, and the lack of independence of the Medical-Legal Institute. He fully supports the proposed constitutional amendment to grant full independence to all federal and state forensic services.

106. The Special Rapporteur encourages the expansion of custody hearings, and urges courts to consider redesigning the process with a view to eliminating the constraints that currently prevent detainees from filing complaints and obstruct the documentation of ill-treatment, as well as the State's ability to monitor its precise prevalence.

107. Apart from the custody hearing project, the Special Rapporteur is aware of the use of so-called *mutiroes*, which expedite individual cases by grouping them together in mass hearings. Although limited in scope, they are a promising attempt to streamline procedures, appoint substitute judges and avoid unnecessary delays in the administration of justice.

Proposal to lower the age of criminal liability and lengthen the maximum time of detention

108. With regard to safeguards and prevention for adolescents, the Special Rapporteur is aware of draft bill 171/1993, proposing to lower the age of criminal responsibility from 18 to 16 years. The draft bill was approved in the first round of debates in the Chamber of Deputies in June 2015; however, as it amends the Constitution, the bill has to pass both the Chamber of Deputies and the Senate with at least two thirds of the vote, in two rounds.

109. He is greatly concerned about this measure, noting that prosecuting adolescent offenders as adults may violate the obligations of Brazil under the Convention on the Rights of the Child and seriously undermines the 1990 statute on children and adolescents, considered a landmark by children's rights advocates. Approval of these proposals would worsen conditions in the already seriously overcrowded adult detention centres throughout Brazil.

110. The Special Rapporteur learned that, to counter the above-mentioned bill, the federal Government had introduced another bill to lengthen the maximum time of detention in socioeducational centres from the current three years to up to 10 years.

111. This proposal seems to similarly undermine the rights granted to children and adolescents under international and federal law, and to seriously hamper the education and reintegration of adolescents into society. In a worst-case scenario, both bills could potentially be passed.

112. The Special Rapporteur urges Congress to abstain from passing the proposed constitutional amendments and allow children and adolescents to continue enjoying the safeguards granted to them.

D. Conditions of detention

113. In most detention facilities visited, the conditions of detention amounted to cruel, inhuman or degrading treatment owing to severe overcrowding.

114. This has generated a tense, violent and chaotic atmosphere inside the facilities, in which physical and psychological ill-treatment of inmates — women, men, girls and boys — has become the norm, and greatly impacts the living conditions of inmates and their access to food, drinking water, health care, family visits, legal defence, psychosocial support, and work and education opportunities, as well as sun, fresh air and recreation.

115. The Special Rapporteur observed acutely unsanitary conditions in cells and lavatories, yards and, especially, punishment areas. To a somewhat lesser extent, kitchens, visiting areas and other common rooms were also below acceptable standards of sanitation. Only two of the detention facilities visited showed acceptable levels of sanitation; in both cases, they were occupied below capacity.

116. Most prisons visited had punishment cells. Although often constructed as isolation cells, they might accommodate 10 to 15 people at a time, for days and weeks, without even minimal sanitation, such as a toilet or running water. The Special Rapporteur learned of one case in which a cell built for eight persons was being used to hold 58 people.

117. Moreover, he learned of similar conditions in police station lock-ups, where oftentimes detainees are held for longer periods under severely overcrowded conditions and in utterly inadequate facilities, before eventually being transferred to a penitentiary facility — where some spend their entire sentences — while police staff act as prison guards.

118. A main concern of penitentiary inmates is the quality of the food. The Special Rapporteur was able to verify the consistent reports of unvarying nutrient-poor meals. Possibly due to inadequate transportation, in some prisons the meals often become inedible by the time they get to the inmates, who reprepare the food in their cells using hazardous homemade electrical appliances.

119. He was able to observe a few places where inmates were given opportunities to take part in certain activities, including work. Overall, however, such activities were inadequate. He strongly encourages the Government to provide more opportunities for meaningful activity for all inmate groups, for their well-being and economic independence, and to equip them for life after prison.

120. Moreover, separation between pretrial detainees and convicted felons is not observed. Due to the unprecedented and rapid increase in incarceration, facilities originally designed for one or the other category are used indiscriminately. Actions taken to reduce overcrowding in some places have merely slowed the exponential increase in overpopulation. Even states that led the way in reducing pretrial detention have seen their prison population figures remain the same.

121. The Special Rapporteur heard about unreasonably harsh disciplinary measures, including cases in which inmates had invoked a right (e.g. requesting a mattress) and been punished for exhibiting "negative leadership" by prolonged sentences, or months or years in isolation. Disciplinary measures were typically applied collectively and without a hearing or a notice of the length of time the measure would be applied.

122. With regard to children and adolescents, he noted with concern that the socioeducational centres seemed, in practice, to function in a very similar way to adult penitentiary facilities, thus failing to pay special attention to the needs and rights of children and adolescents. Architecturally, the socioeducational centres follow the principle of a regular detention centre, with the young people locked up behind bars in rooms that are similar if not equal to prison cells, with a disciplinary system that is often equally rigid.

123. Like their counterparts for adults, many juvenile detention facilities suffer from excessive overcrowding. Adolescents spend most of their time in their rooms with little or no time spent in communal areas or outside. Many take their meals inside their rooms.

124. The Special Rapporteur is concerned at the lack of implementation of the socioeducational dimension of the juvenile justice system. Young people are supposed to continue their schooling at the socioeducational centres; however, classes are often cancelled due to a lack of guards available to oversee the classes. Similarly, recreational activities are also sparse or non-existent.

125. He notes with concern the absence of a functioning complaint mechanism allowing young people to submit complaints regarding their treatment without fear of reprisal or a worsening of the situation.

126. Both inmates and staff testified to a constant lack of basic provisions, such as blankets, soap, sanitary napkins, shaving blades, mattresses, plastic gloves and laundry service, leading to negative impacts on hygiene and health, including skin diseases and other maladies.

127. The Special Rapporteur did not visit the "connector" in the São Paulo-Guarulhos Airport, where in early 2015 it was reported that detained refugees and migrants held upon their arrival in the country waited many days to have their cases heard, under very poor conditions and without communication or access to lawyers or interpreters. The federal Government and local authorities took action to improve those conditions and the premises.

128. While physical, medical and nutritive shortages and inadequacies constitute an overall problem in Brazil's penitentiary system, the Special Rapporteur stresses the asymmetrical impacts they have on certain groups, including women and girls (in particular while pregnant, giving birth or breastfeeding, of if they are accompanied by children) and persons with disabilities.

Health services

129. From a medical point of view, with few exceptions, conditions of detention in places visited suffered from significant deficiencies regarding basic sanitation and access to drinkable water, edible food, and medical and psychological attention.

130. The extreme lack of sanitation found in most places visited, combined with the presence of highly contagious diseases — tuberculosis, leprosy and hepatitis — and overcrowding, have turned prisons, especially those for male inmates, into places where prevention of disease is a permanent and unmet challenge.

131. The national health plan for the penitentiary system and the national policy on comprehensive health care for people deprived of liberty in prison set out the principle that, in theory, the public health system covers all inmates. This is not the case in practice, however. Due to severe overcrowding, health services in prisons are critically lacking capacity to effectively accomplish their mission of providing basic medical attention to inmates.

132. All facilities visited had infirmaries, which provide a minimum of comfort and privacy; however, none had the adequate physical or technical facilities required for a thorough forensic examination. They had a basic staff of technicians and a sporadic presence of health professionals, mainly physicians, dentists and psychologists. The Special Rapporteur received numerous reports from inmates claiming they had not seen a doctor in months, or ever. In all of the prisons visited by the Special Rapporteur, he saw a doctor present in only one of them, a prison for women.

133. The number of professional staff serving the medical needs of inmates is in general severely inadequate, as are the medical supplies and surrounding facilities.

134. In one prison, he found patients lying on the floor, cared for only by other sick inmates whose physical situation was only slightly better.

135. The health situations of inmates must be subject to regular evaluation by impartial experts without delay; in situations in which an inmate has a chronic or terminal disease or condition, he or she should have the possibility to have his or her regimen changed to a more appropriate one, e.g. home detention or hospital detention.

136. The Special Rapporteur received numerous and worrying reports of sedatives being used excessively with the purpose of "keeping the adolescents calm" and confirmed, in one place visited, that most children were receiving sedatives by prescription.

137. The inclusion of inmates in the general public health system is insufficient; there is a need to respond to the particular needs of inmates that stem from overcrowded detention conditions, and to prevent and treat prevalent diseases.

138. The Special Rapporteur welcomes an envisaged R$50 million investment in 2015 in the national policy on health care for people deprived of their liberty, as established by an ordinance of the ministries of justice and health on 2 January 2014. One strategic objective of this investment is to "contribute to the control and/or reduction of the most frequent complaints that affect the prison population". He understands that 24 states are already taking part in the implementation of the policy.

139. Noting that many mentally ill people are not treated, but merely incarcerated, the Special Rapporteur visited a public psychiatric hospital which had a specific area for inmates who had been sent on a judicial order. He learned that some of those inmates had no medical justification for being there, but were being held as a "courtesy", since conditions were often better, and overcrowding less pronounced, than in ordinary detention facilities.

140. Law No. 11.343 is aimed at directing drug users to medical attention and treatment provided by so-called "therapeutic communities", private institutions partially financed by the State under the Ministry of Justice. Mental health patients are also detained in therapeutic communities. The Special Rapporteur received worrying reports of frequent torture and ill-treatment, as well as poor conditions. He wishes to stress the Government's responsibility for protecting the physical and psychological integrity of people in these facilities, regardless of the facility's affiliation, or absence thereof, with the State. This includes enforcement of oversight mechanisms.

V. Conclusions and recommendations

A. Conclusions

141. **With regard to legislation, safeguards, prevention and institutional reform, Brazil has made significant progress on paper; however, implementation is lagging far behind.**

142. **Torture and ill-treatment in the course of interrogation are frequent occurrences. Killings by police and by prison staff continue and are not isolated incidents. They most notably affect persons belonging to racial, sexual, gender and other minority groups.**

143. **Conditions of detention often amount to cruel, inhuman or degrading treatment. Severe overcrowding leads to chaotic conditions inside facilities, and greatly impacts the living conditions of inmates and their access to food, water, legal defence, health care, psychosocial support, work and education opportunities, as well as sun, fresh air and recreation.**

144. **Impunity remains the rule rather than the exception, partly owing to highly deficient procedures and practices related to monitoring and documentation.**

145. **The Special Rapporteur welcomes the measures taken, or envisioned, at various levels of government, to combat torture, ill-treatment and unnecessary deaths. He urges the Government step up efforts to ensure nationwide and effective implementation and enforcement of these measures, to safeguard its citizens.**

B. Recommendations

146. **In a spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with appropriate assistance from the international community, take decisive steps to implement the recommendations outlined below.**

147. **With regard to legislation, the Special Rapporteur recommends that the Government of Brazil:**

(a) **Ensure effective implementation and enforcement of existing legislation, and remove obstacles related to resource scarcity or inappropriate political priorities;**

(b) **Use more assiduously and effectively the powers granted in law to federal prosecutors to charge state and federal officials with violations of constitutional norms, including the prohibition of torture and ill-treatment (currently an exceptional measure that has never been used for these purposes);**

(c) **Effectively implement and enforce existing law by conditioning federal funding on state compliance;**

(d) **Introduce effective measures to overcome overcrowding, backlogs and bottlenecks, including with reference to best practices and lessons learned by the states and other countries;**

(e) **Introduce drug policy reform and develop standards for determining purpose of possession based on fixed quantities;**

(f) **Strengthen alternatives to punishment, such as prevention and treatment of drug use;**

(g) **Define and implement a more rigorous approach to legitimate arrests, to abolish the current misuse of *flagrancia*;**

(h) **By law, immediately expand the application of custody hearings to the entire country, and ensure complete geographic coverage within each state;**

(i) **Widen custody hearings to cover all categories of crime;**

(j) **Encourage victims to speak up and take measures for the effective documentation of torture or ill-treatment;**

(k) **Eliminate constraints that presently prevent detainees from formally denouncing, and the State from knowing, the precise prevalence of torture and ill-treatment;**

(l) Avoid weakening the safeguards granted to children, and abstain from passing proposed constitutional amendments with regard to the age of criminal responsibility and the maximum time of detention;

(m) Close current gaps in Law No. 13.060, define which weapons qualify as non-lethal and elaborate on the interpretation of "legality", "necessity" and "proportionality";

(n) Establish effective means to monitor, and sanction, the use by law enforcement and detention personnel of inappropriate force, such as heavy artillery, and to sanction the stocking of such equipment;

(o) Abolish, in law and practice, invasive body searches, pass the currently pending bill (7764/14) and look to other countries for alternative measures;

(p) Address the worst consequences of overcrowding and establish a specific formal programme for medical attention in prisons, including special programmes to prevent and treat prevalent diseases;

(q) Reduce the high number of extrajudicial killings, including "resistance" killings, and approve bill No. 4471, introduced in 2012, abolishing "resistance to arrest followed by death" and similar mechanisms of impunity;

(r) Ensure that violations committed by military agents against civilians are tried by civilian criminal courts.

148. **With regard to safeguards and prevention, the Special Rapporteur recommends that the Government:**

(a) Ensure effective de facto implementation and enforcement of existing safeguards and prevention measures;

(b) Reduce overcrowding and address delays in the application of measures such as early release in the later stages of the serving of prison sentences, especially for good behaviour and earned benefits;

(c) Ensure the allocation of adequate resources to comprehensive training of police and prison personnel, particularly to deal respectfully with and protect members of racial, sexual, gender and other minorities;

(d) Provide appropriate working conditions, and adequate remuneration, for police and prison personnel;

(e) Take measures to eliminate discrimination against minority groups, including based on race, sexual orientation and gender identity;

(f) Ensure that all states follow the recommendation contained in the joint resolution (1/2014) of the National Council on Criminal and Penitentiary Policies and the National Lesbian, Gay, Bisexual and Transgender Council, to establish separate cells for persons who are particularly exposed because of sexual orientation and gender identity, and protect them against exclusion and isolation;

(g) Implement functioning complaint mechanisms in all facilities to allow all inmates to submit complaints regarding their treatment without fear of reprisal or a worsening of their situation;

(h) Ensure effective implementation of the national mechanism to prevent and combat torture, guarantee the transparency of the National Committee for the Prevention and Fight Against Torture and provide full physical, financial and political independence of the national preventive mechanism, in accordance with guidelines on

a national mechanism to prevent and combat torture under the Optional Protocol to the Convention Against Torture;

(i) Guarantee that no person suffers any reprisal as a result of having talked to the Special Rapporteur or other monitoring mechanism;

(j) Deal with the lack of documentation of torture, ill-treatment and death in custody, ensure that all medico-legal staff receive the necessary training, especially in the adequate application of the Istanbul and the Minnesota Protocols, and that necessary infrastructure and equipment are available and accessible for conducting examinations;

(k) Eradicate excessive use of force, including killings, by police and associated impunity, and allocate sufficient staff and resources to prosecutors responsible for investigating these cases.

149. **With regard to conditions of detention, the Special Rapporteur recommends that the Government:**

(a) Take immediate measures to eliminate overcrowding and implement full observance of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the minimum standards for living space required for each inmate (see European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Basic Minimum Standards for Personal Living Space in Prison Establishments (2015));

(b) Provide more opportunities for meaningful activity for all groups of inmates;

(c) Guarantee that young people have access to schooling and recreational activities throughout their stay in socioeducational centres, and implement full observance of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);

(d) Allocate sufficient resources to ensure adequate staffing of socioeducational centres;

(e) Address the lack of effective capacity to reach a basic level of quality in health services inside detention centres;

(f) Ensure effective provision of personnel and materials, adequate in quantity and quality, to meet each individual's health needs;

(g) Improve supervision of infirmaries;

(h) Prevent physical, medical and nutritional shortages and inadequacies from asymmetrically affecting women and girls, and implement full observance of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

150. **With regard to institutional reform, the Special Rapporteur recommends that the Government:**

(a) Close the gap between law and practice, and ensure federal enforcement and oversight of state implementation with regard to the punishment and prevention of torture;

(b) Address structural challenges that currently allow impunity to prevail;

(c) Enhance the scientific capacity, and ensure the full independence, of Brazil's medico-legal system;

(d) Ensure supervision of the forensic services that have the capacity to make binding recommendations and take disciplinary measures in cases of malpractice;

(e) Create a practical interstate environment for sharing best practices and lessons learned related to the fight against torture and ill-treatment;

(f) Put in place and enforce mechanisms to respond to the current lack of oversight, including in special facilities such as "connectors" and "therapeutic communities";

(g) Ensure that the recommendations of oversight bodies, including the national mechanism to prevent and combat torture and the statewide preventive mechanisms, receive adequate follow-up;

(h) Guarantee independence to the national mechanism to prevent and combat torture, statewide preventive mechanisms and other monitoring bodies, and grant them unimpeded access to all places where people are deprived of their liberty, to all information and records, and to private interviews with persons deprived of their liberty;

(i) Prevent, investigate and punish any and all forms of intimidation, threats and violence by prison staff or third parties against persons who participate in monitoring activities, including members of the national mechanism to prevent and combat torture and the statewide preventive mechanisms;

(j) Establish an integrated system to monitor and make publicly available numbers and figures on occurrences of violence and deaths in police and prison custody.

151. **The Special Rapporteur recommends that the Government ensure effective and adequate implementation and application of recommendations from the Special Rapporteur, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and various relevant mechanisms, such as the national mechanism to prevent and combat torture and the statewide preventive mechanisms.**

152. **He requests the international community to support the efforts of Brazil to implement the above-mentioned recommendations, in particular by ensuring effective and comprehensive enforcement of new and existing laws and policies.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil

Corrigendum

Paragraph 147 (n)

For the existing text *substitute*

(n) Establish effective means to monitor, and sanction, the use by law enforcement and detention personnel of inappropriate force, including the improper use of firebombs and noise bombs inside prisons;

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